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In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 734

LEWIS REYNOLDS, PETITIONER

v.

THE UNITED STATES

ON A PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 9–13) is not yet officially reported.

JURISDICTION

The judgment of the Court of Claims was entered November 6, 1933 (R. 13–14). The petition for a writ of certiorari was filed January 20, 1934 (R. 14). The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925.

QUESTION PRESENTED

Whether Section 202 (10) of the World War Veterans' Act of 1924, as amended by Section 9 of the Act of July 2, 1926, precluded the superintendent of a Government hospital, which was not under the supervision of the Director of the Vet-

erans' Bureau, from deducting the cost of board in such hospital from the pension of an insane veteran of the Spanish-American War, in the absence of a finding by the Director of the Veterans' Bureau that the veteran was entitled to the benefits of the Act.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix, *infra*, pp. 9–14.

STATEMENT

The findings of fact of the Court of Claims (R. 5–8) may be summarized as follows:

The petitioner enlisted in the United States Army on November 30, 1897, and, having served three enlistments, was honorably discharged on January 25, 1907 (R. 5–6). In the course of these enlistments, the petitioner served in the Spanish-American War and the Philippine Insurrection (R. 6).

In May 1911, the petitioner was indicted in the District of Columbia for assault with a deadly weapon, was adjudged by a jury to be of unsound mind, and was thereafter committed to the Government Hospital for the Insane (now St. Elizabeths Hospital) by the Secretary of the Interior, who directed that if the petitioner be not indigent his estate be charged with the expense of his support in that institution (R. 6). The petitioner remained in St. Elizabeths Hospital from June 19, 1911, until April 25, 1930, during which time he was

suffering from a psychiatric ailment and was of unsound mind (R. 6–7). On the latter date he was released in the custody of his brother (R. 7), and on March 10, 1933, was adjudged by the Supreme Court of the District of Columbia to be of sound mind (R. 8).

On April 21, 1922, the petitioner's claim for a pension was allowed, effective August 8, 1921, and a pension certificate was issued to him (R. 6). The pension was paid periodically to the Superintendent of St. Elizabeths Hospital for the petitioner's account. At the time of the petitioner's discharge the amounts so paid aggregated $4,036 (R. 6–7). Upon the discharge of the petitioner from the hospital, the sum of $776.83, which had been expended on clothing, and a charge of $3,259.17, for board from May 7, 1922, to February 6, 1930, were deducted from the pension money which had been received on his account (R. 7). The petitioner protested against the refusal of the hospital to pay over to him the money which had been deducted for board, although during the time he had been confined in the hospital no claim had been made on his behalf as to his right to receive the pension without deduction (R. 7).

On June 23, 1930, an application was made to the Director of the Veterans' Bureau on behalf of the petitioner for an order authorizing and directing his hospitalization at St. Elizabeths Hospital from the effective date of the World War Veterans' Act of 1924 to the date of his discharge (R. 8). The

Director found that no application for the hospitalization of the petitioner had been filed while the petitioner required hospitalization, and held that he was without authority of law to issue a retroactive order directing hospitalization (R. 8). On August 13, 1931, the Veterans' Bureau issued a certificate recognizing the petitioner as a veteran of the Spanish-American War and declaring him to be entitled to hospitalization if required, when duly authorized by the Bureau (R. 8).

St. Elizabeths Hospital has never been under the control of the Veterans' Bureau, but the Bureau has the right to, and does, use that institution for the care of insane veterans (R. 8).

The petitioner brought suit in the Court of Claims, alleging that under Section 202 (10) of the World War Veterans' Act of 1924, as amended, he was entitled to hospitalization as an insane veteran of the Spanish-American War without deduction from his pension for the cost of his maintenance in the hospital, and asking judgment for the amount deducted on account of board. The court held that his right to hospitalization under that section was a matter for the Director of the Veterans' Bureau alone to determine, and that since the Director had not passed on the facts the court was without authority to allow recovery.

ARGUMENT

The petitioner contends that since the court found that he was a veteran of the Spanish-American War and was of unsound mind during the time

that he was confined in St. Elizabeths Hospital, Section 202 (10) of the World War Veterans' Act of 1924, as amended (*infra*, p. 11) made it mandatory that he be furnished hospitalization by the Veterans' Bureau, that he was therefore "entitled to hospitalization" within the meaning of the proviso declaring that the pension of a veteran entitled to hospitalization under that subdivision shall not be subject to deduction for his maintenance while in a Government hospital, and that consequently the superintendent of St. Elizabeths Hospital had no authority to charge against his pension any part of the cost of his board in that institution. This contention, we submit, ignores the intent of Congress with respect to the manner in which the right to hospitalization under Section 202 (10) is to be determined.

It is apparent that Congress intended that the Veterans' Bureau should have the responsibility of deciding, in the first instance, at least, who is entitled to the benefits of the Act. Section 5 (*infra*, p. 10) confers upon the Director the duty of administering, executing, and enforcing the provisions of the Act, authorizes him to make rules and regulations for carrying it into effect, and declares that his decision on all questions of fact shall be final.[1] In the exercise of that authority the Direc-

[1] This section was amended by Section 1 of the Act of July 3, 1930, c. 849, 46 Stat. 991 (U.S.C. Sup. VI, Title 38, Sec. 426), so as to provide that the decision of the Director should also be conclusive on questions of law, except as otherwise specified.

tion, and the Director, not having been afforded an opportunity to consider the matter, never determined that he was in need of treatment. Consequently, the petitioner did not fall within the class of veterans deductions from whose pensions were prohibited by the Act. Until his release he remained hospitalized, not as a veteran, but as an insane person from the District of Columbia, committed under the Act of April 14, 1909 (*infra*, p. 20); and his pension was and remained subject to deduction for board by virtue of the Act of February 2, 1929 (*infra*, p. 21). See 6 Comp. Gen. 126.

While it may seem that the decision below works a hardship upon the petitioner, it is to be observed that he obtained a pension in the year 1922 and was released in the custody of his brother in 1930. It does not appear, therefore, that he had no friend or relative who might have initiated appropriate proceedings in his behalf.

CONCLUSION

We submit that the decision below is correct and that the petition should be denied.

Respectfully submitted.

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March 1934.

APPENDIX

STATUTES

The Act of April 14, 1906, c. 1624, 34 Stat. 113, provides in part:

> * * * whenever a person is indicted or is charged by an information for an offense, and before trial or after a verdict of guilty, prima facie evidence is submitted to the court that the accused is then insane, the court may cause a jury to be impaneled * * * to inquire into the insanity of the accused * * *. If the jury shall find the accused to be then insane, * * * the court may certify the fact to the Secretary of the Interior, who may order such person to be confined in the hospital for the insane, and said person and his estate shall be charged with the expense of his support in the said hospital. * * *

The Act of February 2, 1909, c. 58, 35 Stat. 592, (U.S.C., Title 24, Sec. 165) provides in part:

> * * * During the time that any pensioner shall be an inmate of the Government Hospital for the Insane, all money due or becoming due upon his or her pension shall be paid by the pension agent to the superintendent or disbursing agent of the hospital, upon a certificate by such superintendent that the pensioner is an inmate of the hospital and is living, and such pension money shall be by said superintendent or disbursing agent disbursed and used, under regulations

to be prescribed by the Secretary of the Interior, for the benefit of the pensioner, * * * and to pay his or her board and maintenance in the hospital. * * *

Section 5 of the World War Veterans Act, 1924, c. 320, 43 Stat. 607, 608 (U. S. C., Title 38, Sec. 426) provides as follows:

> SEC. 5. The director, subject to the general direction of the President, shall administer, execute, and enforce the provisions of this Act, and for that purpose shall have full power and authority to make rules and regulations, not inconsistent with the provisions of this Act, which are necessary or appropriate to carry out its purposes, and shall decide all questions arising under this Act and all decisions of questions of fact affecting any claimant to the benefits of Title II, III, or IV of this Act, shall be conclusive except as otherwise provided herein. All officers and employees of the bureau shall perform such duties as may be assigned them by the director. All official acts performed by such officers or employees specially designated therefor by the director shall have the same force and effect as though performed by the director in person. Wherever under any provision or provisions of the Act regulations are directed or authorized to be made, such regulations, unless the context otherwise requires, shall or may be made by the director. The director shall adopt reasonable and proper rules to govern the procedure of the divisions and to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits of compensation, insurance, vocational training or maintenance and support allowance provided for in this

Act, the forms of application of those claiming to be entitled to such benefits, the methods of making investigations and medical examinations, and the manner and form of adjudications and awards.

Section 202 (10) of the World War Veterans' Act, *supra*, as amended by Section 9 of the Act of July 2, 1926, c. 723, 44 Stat. 790, 794, 796 (U.S.C. App., Title 38, Sec. 484), provides:

> SEC. 202 (10). That all hospital facilities under the control and jurisdiction of the bureau shall be available for every honorably discharged veteran of the Spanish-American War, the Philippine insurrection, the Boxer rebellion, or the World War suffering from neuropsychiatric or tubercular ailments and diseases, * * * regardless whether such ailments or diseases are due to military service or otherwise, including traveling expenses as granted to those receiving compensation and hospitalization under this Act. The director is further authorized, so far as he shall find that existing Government facilities permit, to furnish hospitalization and necessary traveling expenses incident to hospitalization to veterans of any war, military occupation, or military expedition, * * * not dishonorably discharged, without regard to the nature or origin of their disabilities: * * * *Provided*, That preference to admission to any Government hospital for hospitalization under the provisions of this subdivision shall be given to those veterans who are financially unable to pay for hospitalization and their necessary traveling expenses: * * * *And provided further*, That the pension of a veteran entitled to hospitalization under this subdivision shall not be subject to deduction.

while such veteran is hospitalized in any Government hospital, for board, maintenance, or any other purpose incident to hospitalization: *Provided further*, That the Act of May 4, 1898, entitled "An Act making appropriations for the naval service for the fiscal year ending June 30, 1899, and for other purposes", the Act of February 28, 1861, as amended by the Act of February 2, 1909, relative to the Government hospital for the insane in the District of Columbia, or any other Act, insofar as they are inconsistent with the provisions of this section be, and they are, hereby modified accordingly.

REGULATIONS

Section 9121 of Veterans' Bureau Regulation No. 155, promulgated September 15, 1926 (U.S. Veterans' Bureau Regulations and Procedure, 1928, Part 1, p. 187) provided:

> SEC. 9121. The pension of a veteran entitled to hospitalization under section 202 (10) of the World War veterans' act, as amended, shall not be subject to deduction for board, maintenance, or any other purpose incident to hospitalization while such veteran is hospitalized in any Government hospital. When a pensioner entitled to hospitalization under section 202 (10) of the World War veterans' act, as amended, is already hospitalized by authority of and under the jurisdiction of a department other than the United States Veterans' Bureau, such patient will not be transferred to the jurisdiction of the United States Veterans' Bureau except on proper application to be submitted in accordance with existing instructions, such application to be forwarded to central office for recommendation by the

medical director to the director for approval. (September 30, 1926.)

This section was reissued on November 15, 1926, as a part of Regulation No. 160 (p. 189) and again on August 25, 1928, as Section 9122 of Regulation No. 196 (p. 220).

The practice of the Bureau with respect to pensioners already hospitalized by authority of another Federal agency was later set forth in more detail in paragraphs 6056 and 6059 of the Regulations, effective June 16, 1931. These paragraphs read as follows:

6056. *Disposition of Already Hospitalized Veterans.*—If retired army or navy (including marine corps) personnel, or other persons specified in paragraph 6048 who are potentially entitled to hospitalization under section 202 (10) World War veterans' Act, 1924, as amended, have been admitted to an army or navy hospital upon authorization other than that of the Veterans' Administration, the expense of such hospitalization will not be assumed until authorization is issued for the placing of the names of such persons on the rolls of Veterans' Administration beneficiaries in such hospitals, or for the transfers of such persons to United States veterans' hospitals. The fact that another federal agency has already hospitalized such persons will not automatically entitle them to be taken over by the Veterans' Administration. They will be required to apply, or, if they are incompetent, their legally appointed guardians, near relatives, or the hospital heads will apply for them, to be hospitalized under section 202 (10) World War veterans' Act, 1924, as amended. Their eligibility therefor having

been determined, their names will be placed on the list of those awaiting available beds, in the order of dates of application; and, unless an emergency is satisfactorily shown, such persons will not be granted priority in the furnishing of available beds over other applicants whose names precede theirs on the said lists. (June 16, 1931.)

6059. *Disposition of Pensioners Hospitalized by Federal Agencies Other Than the Veterans' Administration.*—When a pensioner entitled to hospitalization under section 202 (10) World War veterans' Act, 1924, as amended, is already hospitalized by authority of any federal agency other than the Veterans' Administration, the issuance of authorization for the placing of such pensioner's name on the rolls of Veterans' Administration patients at the institution where he is already hospitalized, or for his transfer therefrom to a United States veterans' hospital, will be governed by the conditions specified in paragraph 6056. (June 16, 1931.)

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